IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.2466 OF 2004

IN

FIRST APPEAL NO.756 OF 1987.

Municipal Corporation of
Gr.Bombay. : Appellants.

versus

Miss. Dolly Thakore : Respondent.

Mr.K.K.Tated with Ms.G.S. Roychoudhari for the appellant.

Ms.S.R.Rawell with V.V.Khemka for Mr.S.R.Kudroli for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 17th February 2005.

ORAL ORDER [IN CHAMBER]

1. This appeal was decided by me on 20th

April 2004. Thereafter, the Municipal Corporation has filed this application. In this case the original claim was decided by the tribunal on 24th April 1987 and the tribunal awarded Rs.5,74,800/- with interest at the rate of 12% and costs of litigation. In the appeal, this amount was reduced by me to Rs.2,50,000/- with interest as awarded by the tribunal i.e. interest at the rate of 12%.

2. The dispute now between the parties is, on deposit of Rs.Three lakhs in Court at the time of admission of this appeal on 16.12.1987, whether the Municipal Corporation is liable to pay interest thereafter to the original claimant. Counsel for the Municipal Corporation has relied upon Order XXI Rule 1 Subclause (4) which provides as under :-

> "(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2)."

He contended that not only the claimant had

information of the deposit being made by the municipal corporation but the claimant had withdrawn that amount of Rs.Three lakhs and, therefore, the claimant is not entitled to any interest from the date of deposit on that amount as per the order of the tribunal or as per the order of this Court in appeal. He also contended that had the amount not been withdrawn by the claimant then it could have been invested by the Court and it would have fetched huge amount towards interest by now. But because of withdrawal of the amount by the Claimant, the corporation had suffered loss of interest and, therefore, now to direct the corporation to pay interest again would put the corporation to double loss.

. He relied upon the judgment of the Supreme Court reported in **AIR 1997 SC 2951 [Rajasthan State Road Transport Corporation Jaipur v. Smt. Poonam Pahwa & ors.)**. In that case, the amount of compensation as awarded by the tribunal was deposited by the judgment-debtor in the Court, however, neither the Court nor the judgment-debtor informed the claimants about such deposit the order granting interest on the

decretal amount from the date of deposit till decree holder got information of such deposit was legal. Counsel for the appellant therefore contended that the liability of the judgment debtor to pay interest arises till he gives notice of deposit and till claimant gets information about the deposit and, thereafter no liability was upon the corporation to pay interest.

3. As against this, the counsel for the claimant relied upon the judgment of the Supreme Court reported in **AIR 1968 SC 1047 [P.S.L. Ramanathan Chettiar & ors. v. O.R.M.P.R.M. Ramanathan Chettiar]**. My attention was drawn particularly to paragraphs 12 to 15, wherein in para 15, it is held as :-

> "15. The last contention raised on behalf of the respondent was that at any rate the decree holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree holder was

not free to withdraw it whenever he liked even before the disposal of the appeal in case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21, Rule 1 CPC and as such, there is no question of the stoppage of interest after the deposit."

4. Counsel for the claimants, therefore, contended that in the instant case the municipal corporation deposited the amount as is observed by the Supreme Court in para 12 and, secondly, the claimant had to withdraw the amount only after furnishing the bank guaranty which was to be kept alive till decision of the appeal. Therefore, he contended that Order 21 Rule 1 of the Code of Civil Procedure relied upon by the municipal corporation can not in any way help the corporation.

5. The crucial question is, whether the claimant is entitled to interest in spite of withdrawal of amount against security or, whether the corporation is not liable to pay interest from the date of deposit of amount of Rs.Three

lakhs under Order 21, Rule 1, Clause (4) of the C.P.C.

6. Alternatively the counsel for the claimant contended that the principal amount granted by this Court was Rs.2,50,000/- and if 12% interest on that amount is granted from 8.12.87 till 27.4.88, i.e. till the date of withdrawal of amount of Rs.Three lakhs, the amount comes to Rs.4,12,054/- and, if the claimant has withdrawn Rs.Three lakhs, still amount of Rs.1,12,054/- was to receive by the claimant and that amount shall carry interest at 12% as principal amount till the date of actual payment and, according to the calculation made by him, the amount of interest at 12% from 1988 till the date of decision of appeal comes to Rs.2,18,342.50/-. The counsel for the claimant tendered a statement of Punjab National Bank to show that for keeping the bank guarantee alive from the date of furnishing bank guarantee till the date of disposal of the appeal, the claimant has to bear expenditure of Rs.18,775/-.

7. The calculation made by the Corporation in support of their contentions in this application

by their letter dated 27.9.2001 is taken on record.

8. I have considered the submissions made by both the advocates and I find that both of them are justified in their respective submissions. Subclause (4) of Rule 1 of Order XXI of the CPC supports the contention of the Corporation that once the amount is deposited by them, it will not carry interest. Secondly, the witndrawal of the amount by the respondent further strengthen their contention.

9. However, it is equally true that the judgment of the Supreme Court in 1968 SC 1047, referred to above in para 3 by me, supports the contention of the respondent that, deposit to avoid execution is no deposit and, particularly if the amount is deposited withdrawn after furnishing security, then it is not in terms of Order XXI Rule 1 of the CPC and, therefore, there is no question of stoppage of interest after the deposit.

10. However, the practical aspect of the matter is that because the respondent withdrew

the amount, same could not be invested by the Court and, the municipal council had to loose interest. Now to order them to pay interest again upon the amount withdran by the respondent would amount to granting interest on interest. Equally at the same time right of the respondent to claim interest by virtue of the Supreme Court's order has to be considered. And therefore, in these circumstances of the matter, I am inclined to accept the altenrative contention of the respondent recorded by me in para 6 above that they would be entitled to Rs.1,12,054/- to be converted into round figure Rs.15,000/- and that amount should carry interest at 12% as principal amount till the date of actual payment. Those calculations have also been made by the respondent and the amount comes to Rs.2,18,342.50 f5rom 1988 till the date of decision of the appeal. This conversy can be resolved by the passing the following order :-

:ORDER:

The appellants - Municipal Corporation of Gr.Bombay to pay Rs.2,18,342.50 to the respondent withint six weeks from today.

Any further delay in payment will carry 12% interest and the interest will start running after six weeks on that amount.

Application is disposed of.

[D.G.DESHPANDE]

17/02/2005 JUDGE.